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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/580,079	03/23/2007	John Joseph MacCarron	7733P010	8073

<sup>7590</sup>  
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EXAMINER
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LONG, ROBERT FRANKLIN

ART UNIT	PAPER NUMBER
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3764

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07/09/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/580,079

**Applicant(s)**

MACCARRON, JOHN JOSEPH

**Examiner**

Robert F. Long

**Art Unit**

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 November 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 06/27/08 and 05/17/06
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. **Claims 1-9, 16 and 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over **Dailey (US 5342266 A) in view of Duggan (US 6257614 B1)**

**Regarding claims 1, 2, and 18**, Dailey discloses a sport board simulator, *ski board training device*, 10, pivot mount assembly about a simulator axis with a sliding movement parallel to first simulator axis, *angle plate 32 is pivotally mounted onto the slide member 29 in order to vary the pitch angle or angle of inclination A of a ski board 33 relative to the main channel member 11, (column 1, lines 10-12, column 3, lines 50-55, column 5, lines 44-67).*

But fails to teach boot bindings with adjustment means pivotally connected to the board with rotation about a central axes and intersecting orthogonally with the

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simulator/board axis and measuring the angle between the foot and simulator/board axis.

However, Duggan teaches boot bindings, **58/60/122, sport or snow board, 68/68A/68A1/68/A2/68/A2B**, (column 12, lines 1-10, figures 1-34), pivot mount assembly, **pivot mount plate 74-74i**, bindings for movement toward and away from the other foot bindings, **shuffle their feet** (column 13, lines 26-67, column 14, lines 1-13, and column 29, lines 55-67), adjustment means connected to foot bindings, **adjust rider foot positions**, (column 9, lines 11-29, figures 7, 10, and 17) and **Rotational adjustment of the binding is made by loosening and raising/disengaging the locking disc 52 and rotating disc boot bracket 62**, (column 14, lines 27-37) **new position**, (column 29, lines 8-18), and **adjuster nut handle 96**, (column 18, lines 28-33), and hole positions in connecting rod 78 also can accommodate **different foot stance orientations** (column 16, lines 65-67, column 17, lines 1-16) and (abstract, column 8, lines 57-67, column 9, lines 1-10, figures 1-34). Further Duggan also teaches sliding movement with the foot bindings being parallel to the board axis, **symmetrical about the longitudinal axis as well as the horizontal axis**, (column 28, lines 3-8, figure 22) and **gradual sweeping turns**, (column 30, lines 7-22/lines 33-49).

All of the parts and technique of using them are known in Dailey and Duggan. The only difference is the combination of the "old elements" into a single foot binding pivoting board sport simulator training device. The marketplace also reflects the reality that board sport simulator training devices are common place in exercise equipment and Daileys board simulator could be modified to have pivoting foot bindings as taught

in Duggan. Thus, it would have been obvious to the exercise artisan to implement/substitute or use an foot binding apparatus that are commonly available and understood in the art and the marketplace into Daileys board simulator. Also, since they are no way dependent on the board simulator in order to achieve the commonly understood benefits of such adaptation as desired shape, fastening, and/or increase/decrease size.

**Regarding claim 3**, Dailey in view of Duggan teaches the incorporation of a snow board, **68/68A/68A1/68/A2/68/A2B**, (*view Duggan, column 12, lines 1-10, and figures 1-34*).

**Regarding claim 4**, first simulator axis is below the foot bindings, *pivotally mounted onto the slide member 29, (column 5, lines 44-67, figures 1,2, and 4)*.

**Regarding claim 5 and 6**, Dailey in view of Duggan teaches pivoting mount assembly provides resistance to the pivoting ground supported base and the foot support surface toward the horizontal plane, *elastic resistance to the sliding longitudinal displacement of the ski board, (Dailey, Abstract), and gas strut, spring sliding resistance means, rubber band 51, (Dailey, column 4, lines 39-44, figures 5 and 6) and (column 6, lines 1-10/lines 21-41, figures 1-6)* with a sliding movement able to provide a roll movement of the boot bindings and a orthogonal pitch and yaw movement about the axes perpendicular to the simulator axes, *pivotally mounted onto the slide member 29 in order to vary the pitch angle or angle of inclination A of a ski board 33 relative to the main channel member 11, (Dailey, column 1, lines 10-12, column 3, lines 50-55, column 5, lines 44-67)*.

But fails to teach two elastomeric pivots with adjustable means.

Dailey does teach the **gas strut, spring sliding resistance means, rubber band 51**, as resistance means and also teaches *adjusting the device to individual needs and lock the pitch via locking pin (column 3, lines 20-21/lines55-63)* and also teaches that *several types of resistance means could be incorporated (column 6, lines 9-12, figures 2,5, and 6)*.

All of the parts and technique of using them are known in Dailey and Duggan. The only difference is the combination of the "old elements" into a single foot binding pivoting board sport simulator training device with elastomeric pivots. The marketplace also reflects the reality that board sport simulator training devices are common place in exercise equipment and Daileys board simulator could be modified to have two elastomeric pivots with adjustable means as taught in Dailey. Thus, it would have been obvious to the exercise artisan to implement/substitute or use elastomeric pivots with adjustable means that are commonly available and understood in the art and the marketplace into Daileys board simulator. Also, since they are no way dependent on the board simulator in order to achieve the commonly understood benefits of such adaptation as desired shape, fastening, and/or increase/decrease size.

**Regarding claim 7**, Dailey in view of Duggan teaches a screw type adjuster for adjusting the spacing there between the riders feet, **new position**, (*Duggan column 29, lines 8-18*), and **adjuster nut handle 96**, (*column 18, lines 28-33*), and hole positions in connecting rod 78 also can accommodate **different foot stance orientations** (*Duggan*

*column 16, lines 65-67, column 17, lines 1-16) and (Duggan, abstract, column 8, lines 57-67, column 9, lines 1-10, figures 1-34).*

**Regarding claim 8**, Dailey in view of Duggan teaches both bindings are mounted for linear sliding movement and the adjustment means includes a threaded adjuster/screw block, **adjuster nut handle 96**, (Dailey, column 18, lines 28-33), sliding blocks, **slide member 29**, *angle plate 32 is pivotally mounted onto the slide member 29*, (Dailey, column 1, lines 10-12, column 3, lines 50-55, column 5, lines 44-67) and that **several types of resistance** means could be incorporated (Dailey, column 6, lines 9-12, figures 2, 5, and 6).

**Regarding claim 9**, Dailey in view of Duggan teaches a means to measure the spacing between the foot bindings, (Duggan, *hole positions in connecting rod 78 also can accommodate* **different foot stance orientations** (column 16, lines 65-67, column 17, lines 1-16) and (abstract, column 8, lines 57-67, column 9, lines 1-10, figures 1-34).

**Regarding claims 16**, Dailey in view of Duggan teaches a means for determining a riders stance from an initial narrow stance, **adjust rider foot positions**, (Duggan, column 9, lines 11-29, figures 7, 10, and 17), **new position**, (Duggan, column 29, lines 8-18), and **adjuster nut handle 96**, (column 18, lines 28-33), and *hole positions in connecting rod 78 also can accommodate* **different foot stance orientations** (Duggan, column 16, lines 65-67, column 17, lines 1-16) and (Duggan, abstract, column 8, lines 57-67, column 9, lines 1-10, figures 1-34).

4. **Claims 10-15 and 17**, are rejected under 35 U.S.C. 103(a) as being unpatentable over **Dailey (US 5342266 A) in view of Duggan (US 6257614 B1) in view of Wilson (US 6257614 B1)**.

**Regarding claims 10 -12, and 17** Dailey in view of Duggan fails to teach a knee alignment indicating device for assisting a rider in aligning their knees vertically with his respective foot via an height adjusting telescoping rod assembly with a knee receiving cup to align vertically with the knees of different height users.

However, Wilson teaches a similar balancing device with adjustable, in height and angle, telescoping rods, ***poles 100***, conforming to the user height and that various modifications could be made to the balance training/entertainment device, *telescoping members which are fixable at a plurality of locations, (column 10, lines 65-67, and column 11, lines 1-10, column 12, lines 1-10, figure 1)*.

All of the parts and technique of using them are known in Dailey, Duggan, and Wilson. The only difference is the combination of the "old elements" into a single foot binding pivoting board sport simulator training device with a knee alignment apparatus. The marketplace also reflects the reality that board sport simulator training devices are common place in exercise equipment and Daileys board simulator could be modified to have two knee alignment apparatuses as taught in Wilson. Thus, it would have been obvious to the exercise artisan to implement/substitute or use telescoping rods as taught by Wilson for knee alignment into Daileys board simulator. Also, since they are no way dependent on the board simulator in order to achieve the commonly understood



benefits of such adaptation as desired shape, training simulation, and/or increase/decrease size.

**Regarding claims 13**, Dailey in view of Duggan in view of Wilson teaches the foot bindings mounted to the pivoting mount assembly for rotation about the central axes orthogonal to the first simulator axes with angle adjusting means, , ***pivot mount plate 74-74I***, *bindings for movement toward and away from the other foot bindings, shuffle their feet* (column 13, lines 26-67, column 14, lines 1-13, and column 29, lines 55-67), adjustment means connected to foot bindings, ***adjust rider foot positions***, (column 9, lines 11-29, figures 7, 10, and 17) and ***Rotational adjustment of the binding is made by loosening and raising/disengaging the locking disc 52 and rotating disc boot bracket 62***, (column 14, lines 27-37) ***new position***, (column 29, lines 8-18), and ***adjuster nut handle 96***, (column 18, lines 28-33), and hole positions in connecting rod 78 also can accommodate ***different foot stance orientations*** (column 16, lines 65-67, column 17, lines 1-16) and (abstract, column 8, lines 57-67, column 9, lines 1-10, figures 1-34).

5. **Claims 14 and 15** rejected under 35 U.S.C. 103(a) as being unpatentable over Dailey (US 5342266 A) in view of Duggan (US 6257614 B1) in view of Wilson (US 6257614 B1) in view of Hsich (US 20040138028 A1).

**Regarding claims 14 and 15**, Dailey in view of Duggan in view of Wilson fails to teach a riders seat and a operators seat being fixed on opposing sides of the pivoting mount assembly,

However, Hsich teaches a similar multi-purpose surfing balancer simulator with a seat, and teaches that *any structure or installation that is similar or equivalent shall be included with the invention, (column 14, [0021 and 0023], figure 8).*

All of the parts and technique of using them are known in Dailey, Duggan, and Wilson. The only difference is the combination of the "old elements" into a single foot binding pivoting board sport simulator training device with a seat. The marketplace also reflects the reality that board sport simulator training devices are common place in exercise equipment and Daileys board simulator could be modified to have two seats for user as taught in Hsich and another could easily be added for an operator. Thus, it would have been obvious to the exercise artisan to implement/substitute or use a seat(s) as taught by Hsich into Daileys board simulator. Also, since they are no way dependent on the board simulator in order to achieve the commonly understood benefits of such adaptation as desired shape, training simulation, and/or increase/decrease size.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. **Sano; Takashi (US 6022272 A), Laconis; Gregory E. (US 5941800 A), and Little; Oscar L. (US 5520598 A) and Zejdlik; Donald A. et al. (US 7267346 B2).**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert F. Long whose telephone number is (571)270-3864. The examiner can normally be reached on 5-4-9 (7:30-5).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, LoAn Thanh can be reached on (571) 272-4966. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Robert F Long/  
Examiner, Art Unit 3764  
Wednesday, July 02, 2008

/Fenn C Mathew/  
Primary Examiner, Art Unit 3764